

In the Matter of Merchant Mariner's Document No. Z-207366
Issued to: HERBERT WILLIAMS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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HERBERT WILLIAMS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 22 January, 1954, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-207366 issued to Herbert Williams upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Third Cook on board the American SS SIMMONS VICTORY under authority of the document above described, on or about 11 September, 1953, while said vessel was in the Port of New York, he wrongfully had marijuana in his possession.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the U. S. Customs Port Patrol Officer who searched Appellant, the testimony of the U. S. Customs chemist who analyzed the substance which was stated to have been found on Appellant's person, and the U. S. Customs Laboratory report which showed that the substance analyzed was marijuana. The Investigating Officer then rested his case.

After counsel's motion to dismiss had been denied by the Examiner, Appellant testified under oath in his own behalf. Appellant stated that he had received the substance from a longshoreman at Genoa, Italy, in return for some food; the longshoreman told Appellant that it was Turkish tobacco; Appellant had never looked at the substance but had placed it in his trouser pocket and forgotten about it till the ship arrived at New York 7 1/2 days later; he told the searching Port Patrol Officer that he knew what the substance was since he thought it was Turkish tobacco; and Appellant has never used marijuana.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-207366 and all other licenses, certificates, endorsements and documents issued to

this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that:

POINT A. All legal objections raised during the hearing were proper.

POINT B. The record indicates that the tin box found in Appellant's possession was not large enough to contain 40 grains of marijuana and, consequently, that the substance examined by the Customs chemist was not the substance in the tin box which was found on Appellant's person. Since continuous possession of the tin box was not established from the time it was found on Appellant until its contents were analyzed, the real evidence in the form of the tin box and its contents should have been produced at the hearing.

POINT C. It was a deprivation of due process of law to forcefully remove Appellant's Merchant Mariner's Document from his person at the time of his arrest; and for the Senior Investigating Officer to interject himself into the hearing in order to assist the Investigating Officer who had originally appeared to conduct the Government's case.

POINT D. The Government was guilty of laches in failing to commence the hearing prior to 14 January, 1954, although Appellant had been deprived of his document since 11 September, 1953.

APPEARANCES: Messrs. Tabacoff and Tabacoff, of New York City by Harold Tabacoff, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On a foreign voyage including the date of 11 September, 1953, Appellant was serving as Third Cook on board the American SS SIMMONS VICTORY and acting under authority of his Merchant Mariner's Document No. Z-207366.

When the vessel docked at New York on 11 September, 1953, a U. S. Customs Searching Squad boarded the ship to conduct a search for contraband. Port Patrol Officer Connally was one of the searchers and he had specific orders to search Appellant's quarters aboard the ship.

Officer Connally searched Appellant's locker and other belongings in his presence and no contraband was found. When Appellant then requested that he be permitted to go to the head, Officer Connally asked Appellant if he had anything on his person and Appellant replied in the negative. The Port Patrol Officer frisked Appellant and noticed a bulge in his right trouser pocket. Appellant said it was money and removed a roll of several bills which were folded in half and held together by a heavy rubber band. Officer Connally took off the rubber band and found a small tin box which had been concealed inside the folded bills. When asked where he had gotten the tin box, Appellant said he had received it from a longshoreman in Italy in exchange for a meal. The Port Patrol Officer opened the box and thought the contents contained marijuana. He asked Appellant

if he knew what it was and Appellant said, "Yes." Later, Appellant told Officer Connally that he, Appellant, did not intend to use the contents of the tin box but that he was keeping it to give to a friend who used it. Analysis of this substance at the U. S. Customs Laboratory in New York disclosed that it was 40 grains of pure marijuana.

Appellant's prior disciplinary record during 12 years at sea consists of a probationary suspension in 1944 and an admonition in 1945.

OPINION

POINT A

The record discloses that the Examiner ruled properly on numerous objections raised by counsel during the hearing. Without some specificity upon which this contention is based, it is impractical for me to express detailed views on this point.

POINT B

The U. S. Customs Laboratory report is sufficient to establish the identity of the contents of the tin box found on Appellant with the contents of the tin box which were analyzed by the Customs chemist and determined to be 40 grains of marijuana. This report states that the substance submitted to the chemist for analysis was the same as that which had been seized from Herbert Williams, Third Cook on the SS SIMMONS VICTORY, by Port Patrol Officer Connally.

The record does not conclusively show that the tin box found on Appellant could not have contained as much as 40 grains of marijuana; but the record does conclusively establish that a small tin box was found on Appellant and later analysis of the contents of a small tin box proved that the contents were marijuana. The laboratory report furnishes the connecting link between the seizure and the analysis.

POINT C

The record does not disclose that Appellant's document was forcefully removed from his possession or that any Coast Guard personnel were present at the time of Appellant's arrest on 11 September, 1953. On the contrary, the Examiner stated that Appellant's document was voluntarily deposited with the Examiner at the commencement of the hearing on 14 January, 1954.

The Senior Investigating Officer put in an appearance, during the course of the hearing, to assist an Investigating Officer who was inexperienced and not an attorney. I do not think that this procedure is objectionable when the person charged is represented by learned civilian counsel, as in this case.

POINT D

Appellant has shown no prejudice in the matter of obtaining witnesses, or otherwise, which resulted from the failure to commence these proceedings prior to approximately four months after the date of the offense.

CONCLUSION

The evidence is sufficient to support the finding that Appellant was wrongfully in possession of marijuana on 11 September, 1953. Appellant's concealment of the tin box, his evasive conduct while being searched by the Port Patrol Officer, and his somewhat improbable and contradictory testimony, all indicate that he knew the substance in his possession was marijuana or contraband of a similar nature. In line with the strict policy of the Commandant in cases of all proven narcotics offenders, the order of revocation will be sustained.

ORDER

The order of the Examiner dated at New York, New York, on 22 January, 1954, is ~~REVERSED~~ **AFFIRMED**.

A. C. Richmond
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 29th day of July, 1954.